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The mission of the DC Preservation League is to preserve, protect, and enhance the historic and built environment of Washington, DC, through advocacy

August 18, 2008

The Honorable Adrian M. Fenty
Executive Office of the Mayor
1350 Pennsylvania Avenue, NW
Suite 316
Washington, DC 20004

Dear Mayor Fenty:

We the undersigned members of the DC Bar are writing on behalf of the D.C. Preservation League ("DCPL") in connection with the pending demolition permit for the Third Church of Christ Scientist building, located at 16th and Eye Streets, NW (the "Third Church"). There is an old adage that "hard cases make bad law." The Third Church is undoubtedly a hard case. We understand that some of the parties behind the demolition may be asking you to depart from standard practices in the naming of the Mayor's agent for this case. This is one piece of bad law we hope not to see made from this hard case.

Regardless of the merits of the decision to landmark the building or the church's objections to that decision, we urge you to follow standard practices and designate Rohulamin Quander as the Mayor's agent to hear the appeal from the HPRB's decision to recommend denial of the demolition permit the church seeks.

As you may know, the decision of the Historic Preservation Review Board ("HPRB") to designate the Third Church a landmark subject to the protections of the Historic Landmark and Historic District Protection Act ("the Preservation Act") has generated controversy. The church opposed the landmarks decision and now seeks to demolish the building so that its developer partner can erect an as yet undetermined structure on the site. The church has filed a suit against the District of Columbia in federal court, claiming that the decision to landmark the structure impinges the free exercise of religion. In addition, the church is appealing the HPRB's recommendation to deny the demolition permit.

The appeal from the HPRB's recommendation will go to the Mayor, or his designated agent, for a public hearing regarding the permit. *See* D.C. Code Ann. §§ 6-1102(8), 6-1104; 10A DCMR §§ 103.1-103.5, 104.1-104.7. For the last decade, Rohulamin Quander, a now senior Administrative Law Judge, has served as the Mayor's designated agent for historic preservation ("the Mayor's Agent"). For the following reasons, we strongly believe that Judge Quander should continue to serve in this role for purposes of the hearing that will be conducted to determine whether the demolition permit sought by the church will be issued:

Experience. During his time as the Mayor's Agent, Judge Quander has heard at least 81 permit applications under the Preservation Act. He has also

navigated a number of complicated or controversial cases, such as the proposed addition to the Corcoran Gallery designed by Frank Gehry. Specific to the issues presented by the Third Church demolition permit application, he has presided over hearings related to the alteration or partial demolition of important religious structures in the District of Columbia. Most notably, Judge Quander considered the application for the demolition of St. Patrick's Church and the application for partial demolition of the Calvary Baptist Church. Both cases were contested, but in each case a successful outcome was reached, the positive results of which can be seen today.

The Perception of Fairness. To designate another Mayor's Agent for the sole purpose of hearing the Third Church application would lead to the perception of partiality, no matter how strong the credentials of the individual designated may be. Judge Quander has served as Mayor's Agent for a decade. DCPL has not always agreed with Judge Quander (as is the case of the Corcoran), but DCPL has always found him to be a neutral, impartial arbiter of the issues presented. To appoint someone other than Judge Quander as Mayor's Agent, contrary to longstanding practice, would call into question the impartiality of the proceedings that are subsequently conducted and could undermine public confidence in the process.

The Procedure of the Mayor's Agent Hearings. Hearings on applications to demolish historic structures must be conducted in accordance with the contested case procedures of the District of Columbia Administrative Procedure Act. See D.C. Code Ann. § 2-509; 10A DCMR § 3000.1. Failure to adhere to proper procedures during the hearing would be grounds for appealing any decision to the District of Columbia Court of Appeals and delay any final resolution of the matter for at least a year. Judge Quander's long experience as an administrative law judge will reduce if not eliminate the possibility that procedural irregularities will cloud the merits of the decision reached.

Importance of the Decision. Needless to say, the Mayor's Agent decision on the application to demolish the Third Church building is going to draw much attention. That attention will be focused not only on the ultimate outcome, but also on the method by which the decision was reached. Given the nature of this application, now is not the time to appoint a new Mayor's Agent.

The Preservation Act has functioned well over the last decade during one of the largest development booms in the District of Columbia, thanks in no small part to Judge Quander. A walk through downtown D.C. reveals numerous projects over which Judge Quander has presided as Mayor's Agent and we encourage you to designate him the Mayor's Agent in the Third Church matter as well.

Sincerely,

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cc: Ms. Harriet Tregoning